

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 1301**

---

---

**Introduced by Assembly Member Hill**

February 18, 2011

---

---

An act to amend Sections 22952 and 22974.8 of the Business and Professions Code, and to amend Section 308 of the Penal Code, relating to tobacco.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1301, as amended, Hill. Retail tobacco sales: STAKE Act.

Existing law, the California Cigarette and Tobacco Licensing Act of 2003, requires a retailer to obtain a license from the State Board of Equalization to engage in the sale of cigarette and tobacco products in California. Existing law, the Stop Tobacco Access to Kids Enforcement Act, or STAKE Act, establishes various requirements for retailers relating to tobacco sales to minors. Existing law also makes it a misdemeanor for a retailer to knowingly or under circumstances in which it has knowledge, or should otherwise have grounds for knowledge, sell, give, or in any way furnish a minor with tobacco products or paraphernalia.

Under existing law, violations of the STAKE Act or the above-described misdemeanor provision result in board action, on a set schedule, relating to the licensure of the retailer when the youth purchase survey finds that 13% or more of youth are able to purchase cigarettes, and makes the board's authority inoperative when a youth purchase survey shows less than 13% of youth were able to purchase cigarettes.

Under existing law, for the first violation, the retailer receives a warning letter, as specified. For the 2nd conviction in 12 months, the retailer is fined \$500. For the 3rd violation in 12 months, the retailer is fined \$1,000. For the 4th to 7th violations, inclusive, in 12 months, the retailer's license to sell cigarettes and tobacco products is suspended for 90 days. For the 8th violation in 24 months, the retailer's license is revoked. Existing law provides for a 30-day appeal of the board's decision.

This bill would revise the schedule for board action in response to the occurrence of a violation, as defined, of the STAKE Act or the misdemeanor provision as follows: for a first violation, the retailer would get a warning letter; for the 2nd violation in ~~5~~ 3 years, the retailer would be fined \$500 unless he or she can prove to the board that he or she has purchased an identification verification scanner since the date of the violation; for the 3rd violation in ~~5~~ 3 years, the retailer's license would be suspended for ~~90~~ 45 days, for the 4th violation in ~~5~~ 3 years, the retailer's license would be suspended for 180 days; and for the 5th violation in ~~5~~ 3 years, the retailer's license would be revoked.

This bill would prohibit the board from considering violations that occurred prior to January 1, ~~2011~~ 2012. The bill would delete the provision conditioning the board's authority to take action against retailers on the results of a youth purchase survey. The bill would ~~remove the board appeal process and would, instead,~~ allow suspension or revocation through a specified process. The bill would declare the intent of the Legislature regarding the enforcing agency reporting violations to the board within 30 days of determining that a violation has occurred.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) According to the American Cancer Society, almost 90
- 4 percent of adults who are regular smokers started at or before age
- 5 19.
- 6 (b) A 2009 survey from the United States Centers for Disease
- 7 Control and Prevention found that nearly one-half of high school

1 students had tried cigarette smoking and more than one out of four  
2 high school students were current tobacco users.

3 (c) Smoking-related diseases remain the leading cause of  
4 preventable death in the United States, claiming the lives of  
5 438,000 Americans annually.

6 (d) According to the State Department of Public Health's  
7 California Tobacco Control Program survey, 74 percent of youth  
8 access enforcement agencies reported issuing warnings to  
9 merchants selling tobacco products to minors in 2006.

10 (e) The California Tobacco Control Program survey also found  
11 that law enforcement agencies continued to rank the suspension  
12 or revocation of licenses and civil and criminal penalties for owners  
13 and clerks as effective strategies to reduce youth access to tobacco.

14 SEC. 2. Section 22952 of the Business and Professions Code  
15 is amended to read:

16 22952. On or before July 1, 1995, the State Department of  
17 Public Health shall do all of the following:

18 (a) Establish and develop a program to reduce the availability  
19 of tobacco products to persons under 18 years of age through the  
20 enforcement activities authorized by this division.

21 (b) Establish requirements that retailers of tobacco products  
22 post conspicuously, at each point of purchase, a notice stating that  
23 selling tobacco products to anyone under 18 years of age is illegal  
24 and subject to penalties. The notice shall also state that the law  
25 requires that all persons selling tobacco products check the  
26 identification of a purchaser of tobacco products who reasonably  
27 appears to be under 18 years of age. The warning signs shall  
28 include a toll-free telephone number to the department for persons  
29 to report unlawful sales of tobacco products to minors.

30 (c) Provide that primary responsibility for enforcement of this  
31 division shall be with the department. In carrying out its  
32 enforcement responsibilities, the department shall conduct random,  
33 onsite sting inspections at retail sites and shall enlist the assistance  
34 of persons that are 15 and 16 years of age in conducting these  
35 enforcement activities. The department may conduct onsite sting  
36 inspections in response to public complaints or at retail sites where  
37 violations have previously occurred, and investigate illegal sales  
38 of tobacco products to minors by telephone, mail, or the Internet.  
39 *Participation in these enforcement activities by a person under 18*  
40 *years of age does not constitute a violation of subdivision (b) of*

1 *Section 308 of the Penal Code for the person under 18 years of*  
2 *age, and the person under 18 years of age is immune from*  
3 *prosecution thereunder, or under any other provision of law*  
4 *prohibiting the purchase of these products by a person under 18*  
5 *years of age.*

6 (d) In accordance with Chapter 3.5 (commencing with Section  
7 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
8 the department shall adopt and publish guidelines for the use of  
9 persons under 18 years of age in inspections conducted pursuant  
10 to subdivision (c) that shall include, but not be limited to, all of  
11 the following:

12 (1) An enforcing agency may use persons under 18 years of age  
13 who are 15 or 16 years of age in random inspections to determine  
14 if sales of cigarettes or other tobacco products are being made to  
15 persons under 18 years of age.

16 (2) A photograph or video recording of the person under 18  
17 years of age shall be taken prior to each inspection or shift of  
18 inspections and retained by the enforcing agency for purposes of  
19 verifying appearances.

20 (3) An enforcing agency may use video recording equipment  
21 when conducting the inspections to record and document illegal  
22 sales or attempted sales.

23 (4) The person under 18 years of age, if questioned about his  
24 or her age, need not state his or her actual age but shall present a  
25 true and correct identification if verbally asked to present it. Any  
26 failure on the part of the person under 18 years of age to provide  
27 true and correct identification, if verbally asked for it, shall be a  
28 defense to an action pursuant to this section.

29 (5) The person under 18 years of age shall be under the  
30 supervision of a regularly employed peace officer during the  
31 inspection.

32 (6) All persons under 18 years of age used in this manner by an  
33 enforcing agency shall display the appearance of a person under  
34 18 years of age. It shall be a defense to an action under this division  
35 that the person's appearance was not that which could be generally  
36 expected of a person under 18 years of age, under the actual  
37 circumstances presented to the seller of the cigarettes or other  
38 tobacco products at the time of the alleged offense.

39 (7) Following the completion of the sale, the peace officer  
40 accompanying the person under 18 years of age shall reenter the

1 retail establishment and shall inform the seller of the random  
2 inspection. Following an attempted sale, the enforcing agency shall  
3 notify the retail establishment of the inspection.

4 (8) Failure to comply with the procedures set forth in this  
5 subdivision shall be a defense to an action brought pursuant to this  
6 section.

7 (e) Be responsible for ensuring and reporting the state's  
8 compliance with Section 1926 of Title XIX of the federal Public  
9 Health Service Act (42 U.S.C. Sec. 300x-26) and any implementing  
10 regulations adopted in relation thereto by the United States  
11 Department of Health and Human Services. A copy of this report  
12 shall be made available to the Governor and the Legislature.

13 (f) Provide that any civil penalties imposed pursuant to Section  
14 22958 shall be enforced against the owner or owners of the retail  
15 business and not the employees of the business.

16 SEC. 3. Section 22974.8 of the Business and Professions Code  
17 is amended to read:

18 22974.8. (a) (1) The board shall take action against a retailer  
19 who violates either the STAKE Act (Division 8.5 (commencing  
20 with Section 22950)) or Section 308 of the Penal Code, according  
21 to the schedule set forth in subdivision (b).

22 (2) Violations by a retailer at one retail location may not be  
23 accumulated against other locations of that same retailer.

24 (3) Violations accumulated against a prior retail owner at a  
25 licensed location may not be accumulated against a new retail  
26 owner at the same retail location.

27 (4) Prior to suspending or revoking a retailer's license to sell  
28 cigarette and tobacco products, the board shall notify the retailer.  
29 The notice shall include instructions for appealing the license  
30 suspension or revocation.

31 (b) (1) Upon the first violation of either the STAKE Act  
32 (Division 8.5 (commencing with Section 22950)) or Section 308  
33 of the Penal Code, the retailer shall receive a warning letter from  
34 the board that delineates the circumstances under which a retailer's  
35 license may be suspended or revoked and the amount of time the  
36 license may be suspended or revoked. The retailer and its  
37 employees shall receive training on tobacco control laws from the  
38 State Department of Public Health upon a first conviction.

39 (2) Upon the second violation of either the STAKE Act  
40 (Division 8.5 (commencing with Section 22950)) or Section 308

1 of the Penal Code within ~~five~~ *three* years, the retailer shall be  
2 subject to a fine of five hundred dollars (\$500) unless the retailer  
3 can show proof that he or she has purchased and installed an  
4 identification verification scanner since the date of the violation.

5 (3) Upon the third violation of either the STAKE Act (Division  
6 8.5 (commencing with Section 22950)) or Section 308 of the Penal  
7 Code within ~~five~~ *three* years, the retailer shall have his or her  
8 license to sell cigarette and tobacco products suspended for ~~90~~ 45  
9 days.

10 (4) Upon the fourth violation of either the STAKE Act (Division  
11 8.5 (commencing with Section 22950)) or Section 308 of the Penal  
12 Code within ~~five~~ *three* years, the board shall suspend the retailer's  
13 license to sell cigarette and tobacco products for 180 days.

14 (5) Upon the fifth violation of the STAKE Act (Division 8.5  
15 (commencing with Section 22950)) or Section 308 of the Penal  
16 Code within ~~five~~ *three* years, the board shall revoke the retailer's  
17 license to sell cigarette and tobacco products.

18 (c) *The decision of the board to suspend or revoke the retailer's*  
19 *license may be appealed to the board within 30 days after the*  
20 *notice of suspension or revocation. All appeals shall be submitted*  
21 *in writing.*

22 ~~(e)~~

23 (d) When determining the penalty for violations pursuant to  
24 subdivision (b), the board shall not include violations that occurred  
25 prior to January 1, ~~2011~~ 2012.

26 ~~(d)~~

27 (e) The board shall revoke or suspend the license pursuant to  
28 the provisions applicable to the revocation of a license as set forth  
29 in Section 30148 of the Revenue and Taxation Code.

30 ~~(e)~~

31 (f) For the purposes of determining the accumulation of  
32 violations pursuant to this section, it is the intent of the Legislature  
33 that all of the following apply:

34 (1) A violation of the STAKE Act has occurred when either a  
35 final administrative adjudication is reached or when the retailer  
36 pays the fine of an uncontested violation.

37 (2) A violation of Section 308 of the Penal Code has occurred  
38 when a final judgment of guilty, either by jury, appeal, or plea, is  
39 entered against the retailer or any employee or agent of the retailer  
40 pursuant to Section 308 of the Penal Code.

1     ~~(f)~~

2     (g) It is the intent of the Legislature for the enforcing agency  
3 to notify the board within 30 days of determining that a violation  
4 has occurred, as set forth in subdivision~~(e)~~ (f).

5     SEC. 4. Section 308 of the Penal Code is amended to read:

6     308. (a) (1) Every person, firm, or corporation that knowingly  
7 or under circumstances in which it has knowledge, or should  
8 otherwise have grounds for knowledge, sells, gives, or in any way  
9 furnishes to another person who is under the age of 18 years any  
10 tobacco, cigarette, or cigarette papers, or blunts wraps, or any other  
11 preparation of tobacco, or any other instrument or paraphernalia  
12 that is designed for the smoking or ingestion of tobacco, products  
13 prepared from tobacco, or any controlled substance, is subject to  
14 either a criminal action for a misdemeanor or to a civil action  
15 brought by a city attorney, a county counsel, or a district attorney,  
16 punishable by a fine of two hundred dollars (\$200) for the first  
17 offense, five hundred dollars (\$500) for the second offense, and  
18 one thousand dollars (\$1,000) for the third offense.

19     Notwithstanding Section 1464 or any other provision of law, 25  
20 percent of each civil and criminal penalty collected pursuant to  
21 this subdivision shall be paid to the office of the city attorney,  
22 county counsel, or district attorney, whoever is responsible for  
23 bringing the successful action, and 25 percent of each civil and  
24 criminal penalty collected pursuant to this subdivision shall be  
25 paid to the city or county for the administration and cost of the  
26 community service work component provided in subdivision (b).

27     Proof that a defendant, or his or her employee or agent,  
28 demanded, was shown, and reasonably relied upon evidence of  
29 majority shall be defense to any action brought pursuant to this  
30 subdivision. Evidence of majority of a person is a facsimile of or  
31 a reasonable likeness of a document issued by a federal, state,  
32 county, or municipal government, or subdivision or agency thereof,  
33 including, but not limited to, a motor vehicle operator's license, a  
34 registration certificate issued under the federal Selective Service  
35 Act, or an identification card issued to a member of the Armed  
36 Forces.

37     For purposes of this section, the person liable for selling or  
38 furnishing tobacco products to minors by a tobacco vending  
39 machine shall be the person authorizing the installation or  
40 placement of the tobacco vending machine upon premises he or

1 she manages or otherwise controls and under circumstances in  
2 which he or she has knowledge, or should otherwise have grounds  
3 for knowledge, that the tobacco vending machine will be utilized  
4 by minors.

5 (2) For purposes of this section, “blunt wraps” means cigar  
6 papers or cigar wrappers of all types that are designed for smoking  
7 or ingestion of tobacco products and contain less than 50 percent  
8 tobacco.

9 (b) Every person under the age of 18 years who purchases,  
10 receives, or possesses any tobacco, cigarette, or cigarette papers,  
11 or any other preparation of tobacco, or any other instrument or  
12 paraphernalia that is designed for the smoking of tobacco, products  
13 prepared from tobacco, or any controlled substance shall, upon  
14 conviction, be punished by a fine of seventy-five dollars (\$75) or  
15 30 hours of community service work.

16 (c) Every person, firm, or corporation that sells, or deals in  
17 tobacco or any preparation thereof, shall post conspicuously and  
18 keep so posted in his, her, or their place of business at each point  
19 of purchase the notice required pursuant to subdivision (b) of  
20 Section 22952 of the Business and Professions Code, and any  
21 person failing to do so shall, upon conviction, be punished by a  
22 fine of fifty dollars (\$50) for the first offense, one hundred dollars  
23 (\$100) for the second offense, two hundred fifty dollars (\$250) for  
24 the third offense, and five hundred dollars (\$500) for the fourth  
25 offense and each subsequent violation of this provision, or by  
26 imprisonment in a county jail not exceeding 30 days.

27 (d) For purposes of determining the liability of persons, firms,  
28 or corporations controlling franchises or business operations in  
29 multiple locations for the second and subsequent violations of this  
30 section, each individual franchise or business location shall be  
31 deemed a separate entity.

32 (e) Notwithstanding subdivision (b), any person under 18 years  
33 of age who purchases, receives, or possesses any tobacco, cigarette,  
34 or cigarette papers, or any other preparation of tobacco, any other  
35 instrument of paraphernalia that is designed for the smoking of  
36 tobacco, or products prepared from tobacco, while participating  
37 in the enforcement activities that comply with the guidelines  
38 adopted pursuant to subdivisions (c) and (d) of Section 22925 of  
39 the Business and Professions Code is immune from prosecution  
40 for that purchase, receipt, or possession.



- 1 (f) It is the Legislature's intent to regulate the subject matter of
- 2 this section. As a result, no city, county, or city and county shall
- 3 adopt any ordinance or regulation inconsistent with this section.

O